

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BRIAN F. ROSS,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
	:	NO. 07-4893
	:	
v.	:	
	:	
JAMES T. WYNDER, et al.	:	
	:	
Defendant.	:	

**MEMORANDUM AND ORDER**

BUCKWALTER, S. J.

September 16, 2008

This court has reviewed the Report and Recommendation of Magistrate Judge Linda K. Caracappa and Petitioner's Objections thereto. It is clear that Petitioner has failed to exhaust his state remedies. Since the claims he makes are not procedurally defaulted as of this date, we will dismiss the petition without prejudice.

An order follows:

AND NOW, this 16<sup>th</sup> day of September, 2008, upon careful and independent consideration of the petition for Writ of Habeas Corpus, and after review of the Report and Recommendation of United States Magistrate Judge Linda K. Caracappa, and Petitioner's Objections thereto, it is hereby ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED.
2. The Petition for Writ of Habeas Corpus is DENIED, without prejudice.
3. There is no probable cause to issue a certificate of appealability.
4. The Clerk of Court shall mark this case CLOSED for statistical purposes.

BY THE COURT:

s/ *Ronald L. Buckwalter*  
RONALD L. BUCKWALTER, S.J.